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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA RESTAURANT)
 ASSOCIATION,)
)
 Plaintiff,)
)
 v.)
)
 THE CITY AND COUNTY OF SAN)
 FRANCISCO and THE SAN FRANCISCO)
 DEPARTMENT OF PUBLIC HEALTH,)
)
 Defendants.)

Case No. CV-08-3247 (CW) and
 Case No. CV-08-03685 (CW)

**STIPULATION AND ORDER RE
 DISMISSAL**

Honorable Claudia Wilken

1	CALIFORNIA RESTAURANT)
	ASSOCIATION,)
2)
	Plaintiff,)
3)
	THE COUNTY OF SANTA CLARA AND)
4	THE SANTA CLARA COUNTY PUBLIC)
	HEALTH DEPARTMENT,)
5)
	Defendants.)

STIPULATION

WHEREAS, on March 24, 2008, the City and County of San Francisco ("San Francisco") enacted Ordinance No. 40-08 (as amended by Ordinance No. 195-08), amending San Francisco Health Code Sections 468 through 468.8, which requires covered restaurants to provide nutritional information on menus and menu boards (the "San Francisco Menu Labeling Ordinance");

WHEREAS, on June 24, 2008, the County of Santa Clara ("Santa Clara") enacted Ordinance No. NS-300.793, adding Chapter XXII to Division A18 of the Santa Clara County Ordinance Code, which requires covered restaurants to provide nutritional information on menus and menu boards (the "Santa Clara Menu Labeling Ordinance");

WHEREAS, the California Restaurant Association ("CRA") filed the above-captioned actions to challenge the San Francisco Menu Labeling Ordinance (the "*San Francisco* action") and the Santa Clara Labeling Ordinance (the "*Santa Clara* action") on federal and State constitutional grounds;

WHEREAS, on September 30, 2008, the Governor signed into law California Senate Bill 1420 ("SB 1420"), which requires menu labeling state-wide and contains a preemption clause;

WHEREAS, pursuant to the Parties' prior stipulations, enforcement of fines and penalties under the San Francisco Menu Labeling Ordinance and the Santa Clara Menu Labeling Ordinance has been ordered stayed at all times in which the Ordinances have been effective and until January 1, 2009, when SB 1420 goes into effect;

1 WHEREAS, on November 25, 2008, the City and County of San Francisco enacted
2 Ordinance No. 260-08, which suspends, effective December 25, 2008, Sections 468.3 through 468.8
3 of the San Francisco Menu Labeling Ordinance;

4 WHEREAS, on November 18, 2008, the Santa Clara Board of Supervisors enacted
5 Ordinance No. NS-300.795, which repeals, effective December 18, 2008, the Santa Clara Menu
6 Labeling Ordinance; and

7 WHEREAS, in light of the repeal of the Santa Clara Menu Labeling Ordinance and
8 the suspension of Sections 468.3 through 468.8 of the San Francisco Menu Labeling Ordinance,
9 CRA has agreed to dismiss the *Santa Clara* action with prejudice and to dismiss the *San Francisco*
10 action without prejudice to its being refiled in the event that the San Francisco Menu Labeling
11 Ordinance comes into force in the future;

12 WHEREAS, a case management conference is currently scheduled for January 20,
13 2009, and a joint case management conference statement is due on January 9, 2009;

14 WHEREAS, in light of the entry of this Stipulation, the case management conference
15 scheduled for January 20, 2009 is no longer necessary and would be a waste of judicial resources;

16 IT IS HEREBY STIPULATED AND AGREED, by and among Plaintiff and
17 Defendants, subject to approval of the Court, that:

18 1. CRA shall file a Notice of Voluntary Dismissal with prejudice of the *Santa Clara*
19 action under Fed. R. Civ. P. 41 within five court days of the Court's entry of this Order;

20 2. CRA shall file a Notice of Voluntary Dismissal without prejudice of the *San*
21 *Francisco* action under Fed. R. Civ. P. 41 within five court days of the Court's entry of this Order;

22 3. The *San Francisco* and *Santa Clara* actions shall be stayed pending dismissal, with
23 all dates and deadlines vacated including, but not limited to, the case management statement due on
24 January 9, 2009 and the case management conference scheduled for January 20, 2009; and

25 //

26 //

4. Each party shall bear its own costs and fees in the *San Francisco* and *Santa Clara* actions.

Dated: January __, 2009

DENNIS J. HERRERA
City Attorney
WAYNE SNODGRASS
FRANCESCA GESSNER
TARA M. STEELEY
Deputy City Attorneys

By: _____
Francesca Gessner
Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

Dated: January __, 2009

ANN MILLER RAVEL
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TAMARA LANGE
MIGUEL MARQUEZ

By: _____
Miguel Márquez
Attorneys for Defendant
COUNTY OF SANTA CLARA


Dated: January __, 2009

ARNOLD & PORTER LLP

By: _____
Trenton H. Norris
Attorneys for Plaintiff
CALIFORNIA RESTAURANT ASSOCIATION

PURSUANT TO THE STIPULATION, IT IS SO ORDERED:

Dated: 1/7/09



HONORABLE CLAUDIA WILKEN
UNITED STATES DISTRICT COURT JUDGE